

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LINDA MARSHALL, BEN DAMPIOS, :
AL SPILLOWAY, BERNIE APOTHEKER, : Civil Action No.
HARRY ESPOSITO and BRENT WENTZ, :
on behalf of themselves and all :
others similarly situated, : 07 CV 6950
:
Plaintiffs, :
:
v. :
:
MILBERG WEISS BERSHAD & SCHULMAN :
LLP, LERACH COUGHLIN STOIA GELLER :
RUDMAN & ROBBINS LLP, MELVYN I. :
WEISS, DAVID J. BERSHAD, and :
STEVEN G. SCHULMAN, :
DOES 1 THROUGH 15, :
:
Defendants. :
:
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**DECLARATION OF RUSSEL H. BEATIE IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS AND IN SUPPORT OF
PLAINTIFFS' CROSS-MOTION FOR DISCOVERY PURSUANT TO
RULE 56(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

I, RUSSEL H. BEATIE, declare under penalty of perjury that the following is true and correct:

1. I am an attorney duly admitted to practice in the courts of New York and am a member of the law firm of Beatie and Osborn LLP, counsel for plaintiffs in the above-captioned action.

2. I submit this declaration in opposition to defendant Lerach Coughlin Stoia Geller Rudman & Robbins LLP's ("Lerach Coughlin" or "Defendant") motion to dismiss and in support of Plaintiffs' cross-motion for discovery pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

3. For more than twenty years, the law firm Milberg Weiss Bershad Hynes & Lerach, LLP (at times known by other names), by and/or through one or more of the defendants in this case, and others, engaged in an illegal scheme to obtain appointments as lead counsel in class actions and/or derivative suits and to receive awards of attorneys fees by secretly making illegal payments to certain of their clients to entice them to serve as Plaintiffs, Lead Plaintiffs, and/or Class Representatives.

4. Plaintiffs filed this action against defendants, including Lerach Coughlin, on their own behalf and, as a class action, on behalf of all persons and entities who were members of the certified plaintiffs classes in the lawsuits in which Milberg Weiss Bershad Hynes & Lerach, LLP (the criminal enterprise), by and/or through defendants, made the illegal payments. Plaintiffs seek to recover treble damages, costs, and attorneys fees for violations of the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. ("RICO Act"), specifically 18 U.S.C. §§ 1962(a), (b) and (c) (mail fraud, wire

fraud, and bribery); breach of fiduciary duty; fraud; and violations of Federal Rule of Civil Procedure 23(a)(4).

5. Notwithstanding Lerach Coughlin's assertion that it has made a motion to dismiss; the motion before this Court is clearly a motion for summary judgment.

6. Plaintiffs need, and request, an opportunity to conduct discovery before this motion is heard.

7. To date, no discovery has been taken in this case.

8. Plaintiffs intend to seek through discovery information relating to, at least, the following factual issues: (1) how Lerach Coughlin was formed and funded; (2) which attorneys left Milberg Weiss Bershad Hynes & Lerach, LLP to join Lerach Coughlin; (3) what cases, if any, Lerach Coughlin took from Milberg Weiss Bershad Hynes & Lerach, LLP; (4) whether Lerach Coughlin received any tainted money (particularly for attorney's fees) or cases from Milberg Weiss Bershad Hynes & Lerach, LLP or any of the other defendants in this case; (5) whether Lerach Coughlin appeared in any cases in which Milberg Weiss Bershad Hynes & Lerach, LLP made illegal payments to clients; (6) whether Lerach Coughlin represented any individual that received illegal payments from Milberg Weiss Bershad Hynes & Lerach, LLP; and, (7) whether Lerach Coughlin made any payments to the law firms that acted as

intermediaries between Milberg Weiss Bershad Hynes & Lerach, LLP and its clients who received illegal payments.

9. Discovery on these issues will provide information necessary to create an issue of fact as to whether Lerach Coughlin participated in and/or benefitted from the illegal scheme at issue in this case.

10. This discovery will allow Plaintiffs to dispute Lerach Coughlin's claims in this motion that it did not do anything wrong.

11. Plaintiffs intend to obtain this information through written discovery and depositions. Specifically, Plaintiffs will serve interrogatories and document requests on Lerach Coughlin and Milberg Weiss. Plaintiffs will also seek to depose, at least, Melvin I. Weiss, William S. Lerach, and David J. Bershad.

12. Because this case has just begun, and because Lerach Coughlin's motion was filed in lieu of an answer, Plaintiffs have not had an opportunity to seek this discovery.

13. Plaintiffs filed their complaint against defendants on August 2, 2007.

14. On or about October 30, 2007, the parties stipulated to stay this matter while the related criminal matters proceed. As part of that Stipulation the parties agreed that defendant Lerach Coughlin could file a motion to dismiss, in lieu of an answer, provided that the motion was limited to specific grounds, i.e.,

that Lerach Coughlin did not exist at the relevant times and, therefore, could not have committed any of the alleged wrongful conduct.

15. In its motion to dismiss, Lerach Coughlin argues, in part, that Plaintiffs' Complaint "fails to satisfy even the basic pleading requirements" and, further, lacks the specificity required by Rule 9(b) of the Federal Rules of Civil Procedure. These arguments raised by Lerach Coughlin are beyond the limited grounds identified in the Stipulation.

16. Since the date Plaintiffs filed their complaint, three individuals have pled guilty to criminal charges in connection with the illegal scheme at issue in this case: Steven G. Schulman (10/9/07), Seymour M. Lazar (10/18/07), and William S. Lerach (10/29/07).

17. William S. Lerach was one of the founding members of defendant Lerach Coughlin as well as one of the creators of the illegal scheme at issue in this case.

18. I also submit this declaration in order to bring to the attention of the Court the following documents Plaintiffs rely upon:

a. Plea Agreement For Defendant William S. Lerach Pursuant to Federal Rule of Criminal Procedure 11(c) (1) (C), dated 9/17/07;

- b. Plea Agreement For Defendant David J. Bershad,
dated on or about 7/6/07;
- c. Plea Agreement For Defendant Steven G. Schulman,
dated on or about 9/19/07; and
- d. Plea Agreement For Defendant Seymour M. Lazar,
dated on or about 10/12/07.

I declare under penalty of perjury that the foregoing is true
and correct.

Executed on: November 13, 2007

s/ Russel H. Beatie
Russel H. Beatie, Esq.

CERTIFICATE OF SERVICE

On this 13th day of November, 2007, I certify that I served all counsel of record by filing the foregoing Plaintiffs' **NOTICE OF CROSS-MOTION, PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT LERACH COUCHLIN STOIA GELLER RUDMAN & ROBBINS LLP'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT AND IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR DISCOVERY PURSUANT TO RULE 56(f), and DECLARATION OF RUSSEL H. BEATIE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR DISCOVERY PURSUANT TO RULE 56(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE** by using this Court's ECF system, and by sending same via Federal Express overnight mail to the following:

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